

REMARKS

Examiner Del Sole has rejected the originally filed claims 11-14, 17, 18-21 and 22 of the present application. For the reasons which follow, applicants respectfully traverse this rejection of the Examiner. The applicants do, however, wish to extend appreciation to Examiner Del Sole for the quite detailed review of the claims of the present invention leading to the finding of patentable subject matter of the originally filed claims of the present application and an indication of the allowability of claims 15, 16, 19, 20 and 23-25.

Claim 11 has been amended and claim 39 has been added directed to the subject matter believed to have been found to be allowable in claims 15 and 23 as originally filed. Although not including all of the limitations of the intervening claims, it is respectfully submitted that claims 11 and 39 and the claims which depend therefrom are in condition for allowance for the reasons previously recognized by the Examiner. Such favorable action is respectfully requested.

The Examiner concedes that Adams fails to teach the groove recited in claim 16 but contends:

the limitation "adapted to receive a tool between the knife and the knife support surface to flex the knife to remove the detent from the aperture" is a process limitation that does not further limit the structure of the rotary cutter because while the knife and groove are positive structural recitations of the rotary cutter, the tool and its intended use are not.

Attention is invited to In re Land and Rogers, 151 USPQ 621, 635 (CCPA 1966) which stated:

The dependent claims contain further limitations which the board regarded as functional and gave no weight to them. Since claim 71 depends from 70 they have a common limitation in 70 which is, we think, significant. It reads:

* * * said color-providing substances associated with at least the inner photo-sensitive emulsion layers are *adapted to be rendered diffusible* in said liquid composition *only after at least substantial development* of the next outermost photosensitive * * * layer has occurred. [Emphasis theirs.]

It is true that the italicized portions are "functional" but we do not regard that as good ground to give them "no weight" in view of the third paragraph of 35 U.S.C. 112. We give them weight and with this limitation we think claims 70 and 71 are limited to deferred diffusion *built into the structure recited*, thereby being limited to the actual invention disclosed and hence allowable . . . [Emphasis theirs].

It is, therefore, respectfully submitted that this limitation does limit the structure of the rotary cutter in a manner to distinguish over Adams and/or Parrish. However, in a spirit of conciliation and to advance prosecution, claims 16 and 21 (incorporating claim 22) have been amended in a manner to include positive structural recitations in a manner believed desired by the Examiner. It is respectfully submitted that claims 16 and 21 and the claims which depend therefrom are in condition for allowance for this separate and independent reason. Such favorable action is respectfully requested.

As they are directed to the subcombination, claims 2-9 and 27-31 depend from allowable claims 11 and 21 and thus are in condition for allowance. Such favorable action is respectfully requested.

The Examiner has cited the United States patent listed in NOTICE OF REFERENCES CITED as A and indicated consideration of the prior art cited by the applicants. By the lack of application of these references and other like them within the classes or subclasses searched, the Examiner apparently recognizes the clear patentability of the present invention over any of these references.

Therefore, since the claims of the present application include limitations directed to the features of applicants' rotary cutter which are neither shown, described, taught, nor alluded to in any of the references cited by the Examiner and by the applicants, whether those references are taken singly or in any combination, the Examiner is requested to allow claims 2-8, 11, 12, 14-21, 23-25, 27-30, and 34-42 of the present application and to pass this application to issue.

Respectfully submitted,
James N. Weinstein, et al.

Dated: March 12, 2004

By: John A. O'Toole
John A. O'Toole, Counsel
General Mills, Inc.
1 General Mills Boulevard
P.O. Box 1113
Minneapolis, MN 55440
Telephone: 763-764-2422
Facsimile: 763-764-2268